

Louisiana Gas Service Company and John C. Ragas, Sr. Case 15-CA-10816

July 29, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 26, 1990, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a limited cross-exception and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions,² and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Louisiana Gas Service Company, Port Sulphur, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

“(a) Offer John Ragas immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).”

2. Substitute the attached notice for that of the administrative law judge.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We adopt the judge's conclusion that Angelo Provenzano was a supervisor under Sec. 2(11) of the Act. In addition to the judge's findings on this issue in the “Analysis” section of his decision, we rely on the entirety of Ragas' credited testimony set forth in “The Facts” section of the judge's decision.

³ The General Counsel has excepted to the judge's failure to recommend that Ragas be made whole for any loss of benefits, in addition to any loss of pay, suffered as a result of his discharge. We find merit in this exception and we shall modify the recommended Order and issue a new notice accordingly. We also shall amend the recommended Order to provide for the correct formula for the computation of backpay.

APPENDIX B

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell you that it would be futile for you to select the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, Local 447 or any other labor organization as your bargaining representative.

WE WILL NOT threaten you with discharge if you engage in activities on behalf of the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, Local 447 or any other labor organization.

WE WILL NOT discharge you or otherwise discriminate in regard to your hire or tenure of employment or any term or condition of employment to discourage activity on behalf of the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, Local 447 or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer John Ragas immediate and full reinstatement to his former job or, if such job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights or privileges previously enjoyed, and WE WILL make him whole, with interest, for any loss of earnings and other benefits he may have suffered by reason of the discrimination against him.

WE WILL notify John Ragas that we have removed from our files any reference to the unlawful discharge and that the discharge will not be used against him in any way.

LOUISIANA GAS SERVICE COMPANY

Denise D. Frederick, Esq., for the General Counsel.
Cornelius R. Heusel, Esq. (Kullman, Inman, Bee, Downing, & Banta), of New Orleans, Louisiana, for the Respondent.
James E. Bergeron, of Westwego, Louisiana, for the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, Local 447.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. On a charge filed March 2, 1989, as amended on November 22, 1989, by John Ragas, a complaint was issued on April 25, 1989, alleging that Louisiana Gas Service Company (1) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by informing its employees that it would be futile for them to se-

lect the Union as their bargaining representative and by unlawfully threatening its employees with discharge if they continued to engage in activities on behalf of the Oil, Chemical, and Atomic Workers International Union, AFL-CIO, Local 447 (the Union) and (2) violated Section 8(a)(3) and (1) of the Act by terminating Ragas. Respondent denies violating the Act.

A hearing was held in New Orleans, Louisiana, on November 29 and 30, 1989. On the entire record in this case, including my observation of the demeanor of the witnesses and consideration of the briefs filed by General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Louisiana corporation, with an office and a place of business in Port Sulphur, Louisiana, is a public utility engaged in the sale and distribution of natural gas. The complaint alleges, the Respondent admits, and I find that at all times material Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

Respondent sells natural gas to residential, commercial, and industrial customers. It employs between 500 and 600 people who work out of a number of offices throughout Louisiana. Braid Alleman is the customer service supervisor for the West Jefferson District which covers two of Respondent's offices, namely, Marrero and Port Sulphur, Louisiana. The latter office was involved in the acquisition by Respondent of Delta Gas. Alleman works out of the Marrero office. He testified that he travels to the Port Sulphur office between one and three times a week;¹ that he is in charge of the day-to-day operations at Port Sulphur because he is totally responsible for the type of work being done and the results of that work; and that he is in constant contact with the servicemen in that area by telephone and also through the office personnel.

When Respondent purchased Delta Gas it hired four of the former Delta Gas employees, namely, John Ragas, August Mackey, Mary Jamison, and Orlando Ragas.²

John Ragas worked for Delta Gas from July 1979 until September 1988. He interviewed with John Thomas Patai, who is Respondent's manager of compensation and employment, when Delta Gas sold out to Respondent. Ragas had been a member of the Union since October 1987, holding the position of chairman of the Local since December 1987. According to Ragas, two of Respondent's supervisors or managers knew about his union membership, namely, Patai³ and

Steve Koch, who is a district manager of Respondent.⁴ Ragas spoke with Patai at the Port Sulphur office,⁵ and he spoke with Koch in a coffee shop in Happy Jack, Louisiana, with Patai, Mackey, Orlando Ragas, and Alleman present. Ragas testified that during the meeting at Happy Jack he told Koch that he could not sign Respondent's application because of his involvement in the Union or more specifically, he could not sign the application because it contained a clause that the Company could fire an employee for any reason and the employee had "to agree with whatever . . . [the company] said." Ragas was hired by Respondent on September 29, 1988.⁶

Patai did not recall John Ragas indicating that he had refused to sign his job application because of his union activities and the language in the application indicating that the Company was an employment-at-will company. Koch ultimately made the decision to hire Ragas. Patai testified that he never told Alleman that Ragas was involved in union activities or that Ragas had told him that he was involved in union activities; that he did not play any role in the decision to terminate Ragas; and that he was not aware that Ragas did not sign his application for employment.

Koch testified that while he did attend the above-described meeting in the coffee shop and while he was sitting next to John Ragas,⁷ he did not recall Ragas pointing out that he had refused to sign his application because of his union affiliation or because he did not accept the language in the application about the Company being an employment-at-will company; that he did not recall Ragas ever mentioning union activities or discussing union business or anything to do with the Union during the meeting in the coffee shop; that he did not recall that the job applications were present that day; and that he was not even aware that the application was not signed until the hearing.

According to the testimony of John Ragas, Alleman was his supervisor when he first started working for Respondent. Ragas testified that Alleman came to Port Sulphur every day for the first week; that Alleman then came every other day

union leader at Delta Gas, Patai, replied he did; that the superintendent at Delta Gas, Lolly Jones, voluntarily told him before he interviewed that John Ragas was a union leader at Delta Gas; that Koch was with him when he spoke with Jones; that he believed that he told Ragas that it really did not matter; that after he reviewed the benefits with Ragas, Ragas said that if Delta Gas had benefits like this there would not be any need for a union; that he discussed the interview with Koch and it is possible that he discussed the fact that John Ragas said that he was involved in union activity during the interview; that his notes of the interview, which may have included reference to Ragas' union activity, were placed in a file; that no one else has access to that information; that a supervisor such as Alleman would have access to an employee's personnel file; and that he probably mentioned the interview to his boss, David Hanrath, who is vice president of human resources.

⁴Koch testified that he never told Alleman about his knowledge about John Ragas' union activities "prior to his employment at Louisiana Gas." Hanrath testified that he knew when John Ragas was hired that he was involved in union activities at Delta Gas; that it was general knowledge that the employees at Delta Gas had been involved in some organizing activities prior to the acquisition of the system by Respondent; and that in reviewing with the manager of employment and compensation those candidates he was recommending for hire, it was pointed out to Hanrath, that Ragas had informed Patai that he was an active union advocate.

⁵Ragas testified that Patai said at that time that he knew about Ragas' union involvement.

⁶G.C. Exh. 9, John Ragas' application for employment with Respondent, is not signed or dated by the applicant. Conditions of employment, set forth in appendix A hereto, appear in the application immediately before the place for the signature and the date.

⁷Both Patai and Koch agree with the seating arrangement described by John Ragas.

¹ More specifically, Alleman testified that from September to December 15, 1988, he was in Port Sulphur four times a week; and that after December 15, 1988, he went to Port Sulphur once or twice a week. At the time of the hearing he made the trip every other week.

² John Ragas was hired as a serviceman C and Mackey was hired as a serviceman A based on the salary they previously made at Delta Gas.

³ Patai testified that John Ragas brought up his union activities at Delta Gas during the interview; that when Ragas asked him if he knew Ragas was a

for about a month; and that after that Alleman came to Port Sulphur about once a week, usually on Wednesdays. Regarding his responsibilities at the outset, John Ragas testified that Alleman told him that in addition to the service work he would take care of the supply room, change the charts, run the bank errands, and take care of the large compressor, which is located in Buras, Louisiana,⁸ and used to compress the involved gas, until Alleman could get someone else to handle these duties.⁹ Ragas took until 1:30 p.m. each day to perform these duties and for the remainder of the day he did service work. Assertedly no one else did this work at that time. John Ragas testified that at that time Jamison would take the incoming calls and give them to Mackey in the morning. Mackey would return to Respondent's facility around 2 p.m. to pick up Ragas who would then help Mackey on the jobs assigned. At that time, occasionally Ragas would take a service call in the Port Sulphur area by himself.

About 2 weeks after John Ragas was hired, Hanrath came to Port Sulphur to speak to the four above-described new employees. Koch was also present. With respect to this meeting, John Ragas testified that Hanrath told those assembled that "with the company you could go a long way . . . this company is not a union [sic], never was, and never will be"; that he was 6 or 7 feet from Hanrath and Hanrath was not reading from a paper when he spoke to the employees;¹⁰ that Hanrath had a briefcase in front of him but it was not open; and that Hanrath was not looking down when he made the statements but rather Hanrath was looking directly at him.

Hanrath testified that on October 14, 1988, he spoke to the former employees of Delta Gas who had been hired by Respondent; that the purpose of the meeting was to provide the employees with a statement of the Company's position regarding unions; that he has given such talks 30 to 40 times since he started in 1981 or 1982; that he has a prepared text which he uses; that he prepared the text in 1982; that he has never indicated that there will never be a union at Respondent; that he read the prepared text, Respondent's Exhibit 3, at the involved meeting;¹¹ that he could not recall whether he held the prepared text in his hand as he read it; that he prefaced his reading of the text with a statement that he knew of the employees prior union affiliation because he wanted them to know that it had no bearing on their employment with Respondent but they needed to know how Respondent felt about union organizing of its employees; that he looked up at the people assembled when he gave the talk; that he had a briefcase with him that day; and that Koch was there.

⁸The bank is also located in Buras, which is about 20 miles from Port Sulphur.

⁹As noted below, these duties were assigned to Angelo Provenzano when he came to Port Sulphur. John Ragas testified that these duties were not given to someone else at his request.

¹⁰On cross-examination, counsel for Respondent pointed out that an affidavit John Ragas gave to the National Labor Relations Board (the Board) states "I do not recall *that* the gray haired man was reading from a paper as he spoke to us." (Emphasis added.) After stating "we are talking about precise words here," counsel for Respondent then asked Ragas on cross-examination "And to the extent that this say, [sic] I do not recall the gray haired—if the gray haired man was reading from a paper as he spoke to us, this is wrong." (Emphasis added.) Obviously "if" is not "that."

¹¹The prepared text reads, in part, as follows: "I want to explain to you our position on unions. We do not have a union here now, and we are against having one here in the future. There should be no doubt in your mind as to exactly where we stand on this very important subject."

Koch testified that Hanrath read a prepared statement, Respondent's Exhibit 3, to the employees assembled in Port Sulphur; that Hanrath did not tell employees that the Company would never allow a union in or would never be a union company; that the paper was on the desk in front of Hanrath; that he did not recall if there was a briefcase on the desk; that Hanrath made comments before and after reading the prepared text; and that Hanrath was sitting when he read the speech.

On rebuttal, John Ragas testified that he did not recall seeing Hanrath either holding a paper or looking down at a paper when he talked to the employees.

Respondent's Exhibit 5, dated November 16, 1988, sponsored by Alleman, is a request and complaint. The following appears in the exhibit:

On this particular day, I was at the office in Port Sulphur, when Mary Jamison gave this restore to J. C. Ragas. J. C. left the office and returned at 2:30 p.m. Mary asked him if he had restored this customer, he said he had not. I questioned him as to why he hadn't restored it yet and he answered that he had driven to Buras to give August a hand. It was then that I told him that August was an A serviceman and capable of doing his own work. I told him to go and restore this customer.

John Ragas testified that he received the aforementioned November 16, 1988 work order when he went back to the facility at 1 p.m.; that he had some work to do en route to this job; that when he arrived at the involved job it was raining and he had to wait until it slowed down enough for him to work; that he took the plug out and turned the meter on; that he had to light pilots, a heating system and a hot water heater; and that he did not recall talking to Alleman about this job.

According to Alleman's testimony, sometime in November 1988 he spoke to Ragas about failing to respond to his beeper when he was on call to handle work which had to be done after the normal workday. Ragas told Alleman that his beeper did not go off.¹² Prior to this time, according to Alleman, Respondent had experienced problems with the other type of beeper being used by John Ragas and Mackey. Respondent, according to Alleman, discontinued the use of that type of beeper before this incident occurred. John Ragas testified that this incident occurred around November 20, 1988; that he first became aware of the problem when his wife came to his brother's house and told him that the dispatcher was trying to get him by beeper; that he went into his brother's house and telephoned the dispatcher and asked him, Stewart, what the problem was; that the dispatcher told him that someone ran over a meter and gas was escaping from the system; that he took the call; that he did not know how Alleman became aware of the incident but the next day Alleman was in the Port Sulphur office and he asked him what was wrong with the beeper; that while Alleman could not get the beeper to work, Jamison was able to get it to

¹²Alleman testified that dispatcher Stewart called him and said that he could not get John Ragas with the beeper and that when Stewart called Ragas' house his wife laughed at him and hung up saying that she did not know where her husband was. Alleman also testified that Ragas called him later that same evening indicating that his beeper did not go off.

work; that pursuant to Alleman's instructions he then changed the batteries in the beeper; and that Alleman said that they were going to start to use beepers like the ones which were used by Delta Gas.

When called by Respondent, Alleman testified that just before he brought Provenzano to Port Sulphur Alleman was not satisfied with the work production of either Mackey or John Ragas; and that he made allowances for Mackey because of the area which Mackey worked.

In December 1988 Provenzano was sent to work in Port Sulphur. Alleman testified that Provenzano was sent to Port Sulphur to do service work; that he introduced Provenzano to the employees at Port Sulphur; that Provenzano gave out assignments to Mackey and John Ragas; that when Provenzano gave out assignments he was acting under Alleman's direction to distribute work according to what Alleman had "set . . . up," namely, the geographic location which each serviceman was assigned; that while Provenzano spent a considerable amount of time in the office at Port Sulphur, he did have job responsibilities in the field, i.e., contacting customers who had specific complaints; that Provenzano's duties in the office included taking care of the storeroom, giving out materials, checking the paperwork, and ordering materials; that the paperwork which Provenzano checked included gas leaks and reports that were turned in by the servicemen; that Provenzano was sent to Port Sulphur to make sure that the work "was all being performed"; that Provenzano could not authorize overtime without contacting him unless it was an emergency situation; that probably Provenzano would radio Mackey and John Ragas during the day and take them off a job and move them to another job in response to a telephone call which came into the Port Sulphur office; that Jamison acts as dispatcher at the Port Sulphur office and if an emergency call is telephoned into the Port Sulphur office, she can determine, without checking with Alleman, whether to dispatch the call; that if John Ragas or Mackey had a problem with something they would go to Provenzano with it while he was in the Port Sulphur office; that Provenzano was assigned to handle customer complaints advising Alleman about them so that he could make a decision; that Provenzano facilitated the training of John Ragas and Mackey and he relayed any messages or instructions Alleman had for them; and that he did not tell Provenzano about John Ragas' work problems when Alleman sent Provenzano to Port Sulphur but he did mention that "maybe one of the servicemen may have had too much work [in that he] had the storeroom and he had the charts."

John Ragas testified that when Alleman introduced Provenzano to him and Mackey in the Port Sulphur office Alleman said

[T]his guy here [is] going to be stationed down in your department. They had two other guys before this that was just service men that was helping us out. But he was putting Pro [Provenzano] there permanent, and he was going to be our supervisor down in that area.

. . . .

He just said work along with him, and he told us that whatever came through there, whatever kind of paperwork we had—whatever problems we had, we had to go through Pro and that he didn't want Mary

Jamison giving us any more work or anything—that it all had to come through Pro.

When Provenzano began working at Port Sulphur, John Ragas and Mackey were given their daily assignments in the morning by Provenzano. John Ragas testified that Provenzano used the same office which Alleman occupied when he came to Port Sulphur; that Provenzano would tell them what order to do their jobs; that during the day Provenzano would radio and change the job assignments; that Provenzano would tell him and Mackey to come back to the facility at 1 p.m. and at that time he would give them other jobs; that originally Alleman required that all servicemen come in at 1 p.m. to check to see if there were any other problems that needed to be worked on but unlike Alleman, Provenzano required that the servicemen wait for Provenzano if he was not at the facility when they checked in; that Provenzano went to jobsites twice with him with one involving a situation where heavy equipment had broken the coating on a pipe and Provenzano radioed him and told him to come back to the shop and pick Provenzano up and they went to the site; that the other time the principal of Port Sulphur school spoke to Provenzano about a gas leak which apparently employees of Delta Gas could not find; that Provenzano radioed him and met him at the school and Ragas found the underground leak in the playground after the children were evacuated from the area; that when he located a pipe for excavation Provenzano would tell him whether he had to stay in case the excavator had any problems; that Provenzano was a supervisor and he worked in the office most of the time doing overtime sheets, assigning work, keeping up with the paperwork in the supply room, and giving him and Mackey their orders; that Provenzano radioed him to go to the area serviced by Mackey and assist Mackey; that Provenzano told him that he was Ragas' supervisor;¹³ that Provenzano assigned him work outside Ragas' normal geographic work area;¹⁴ that Provenzano was not doing the same work as him and Mackey; that if he had any questions about an assignment he would check with Provenzano; that Provenzano decided which work had to be completed on the day it was assigned; that he turned in all his work-related documentation, including his timesheets, to Provenzano because Alleman said that Provenzano was the supervisor; that Provenzano would initial the timesheets after reviewing them; that Provenzano would approve overtime; that he did not know whether Provenzano spoke to Alleman before deciding whether or not Ragas could work overtime; that Provenzano did not carry a beeper and he was not on call

¹³ Ragas related that once Jamison put some work on the desk and there was a mistake. Assertedly Provenzano told Ragas that he was the supervisor in the area and Jamison was not supposed to give anybody work. According to the testimony of Ragas, another time a crew from out of the Port Sulphur area came in to get some supplies and Provenzano said "them guys are not supposed to get anything [without] it . . . [going] through me because I am supervisor out here in this area."

¹⁴ One involved relighting the pilots in six or seven houses and the other involved picking up a meter in the geographic area Mackey serviced. Regarding the former, Ragas testified that Provenzano was with him at the site when he told Ragas to do the relighting work; that Provenzano did not telephone Alleman first before directing Ragas to do this work which was in Mackey's territory; and that Jamison would not make decisions about emergency work without calling Alleman first.

after hours; and that Provenzano never talked to him regarding the amount of work shown on his daily trip sheets.

Respondent called Donald Allen, a former employee of Respondent. He testified that when he worked for Respondent he was an A-serviceman who worked in the Port Sulphur area with John Ragas and Provenzano on a temporary basis from December 1988 through February 1989 updating the system there to meet Respondent's standards. According to Allen, Provenzano was in Port Sulphur "to supervise."¹⁵ Allen testified that Provenzano also changed meters, checked for leaks, did turn-ons, and turn-offs; that Provenzano had his own truck while he was in Port Sulphur; that Provenzano did some service work in the field on an as-needed basis when the work load got heavy; that Provenzano

went out—whether it was by himself or with another service man to see how they performed, to help out, to assist, you know, to make sure that maybe other service men was [sic] doing the job like they were supposed to be doing—you know, of the standards.

that he had no idea how many service calls Provenzano made on his own; and that he did not know whether or not Provenzano was making as many service calls as the other people in the office.

Hanrath testified that at the end of 1987 Provenzano's job title was serviceman and since that time he has not been classified by Respondent as anything other than a serviceman; that a serviceman does not have the authority to fire, transfer, suspend, lay off, recall, promote, demote, discipline, adjust grievances, grant wage increases, grant time off, excuse any absences, assign or direct the work of other servicemen, arrange vacation schedules, interview job applicants, or to effectively recommend the hiring, firing, or disciplining of employees; that Provenzano never received authority to do any of the above-described things; and that Provenzano could not have been designated a supervisor without the approval of the human resources department.

Provenzano testified that he lives in Terrytown, Louisiana; that before and after he worked in Port Sulphur he worked in Terrytown; that prior to going to Port Sulphur, while in Port Sulphur, and up to the time of the hearing he was never advised that he had the authority regarding any of Respondent's employees to hire, fire, demote, suspend, lay off, give a wage increase, direct their work,¹⁶ effectively recommend disciplining an employee, arrange their vacation schedules, grant employees overtime, give employees time off, or excuse an absence; that Alleman told him, regarding Port Sulphur, that he was to instruct employees on what to do so as to comply with company procedures and to teach the employees how to fill out paperwork and make out time sheets; that Alleman also told him that he would make the bank run and take care of the storeroom; that Alleman did not tell him that he was expected to supervise at Port Sulphur or that he could tell the employees there that he was a supervisor; that he did not receive a pay increase as a result of going to Port

Sulphur; that he did not carry a beeper and he did not accept night calls when he worked in Port Sulphur because of the travel; that he drove a company truck before, while and after he was in Port Sulphur; that on December 12 Alleman told the employees at Port Sulphur that he, Provenzano, was there to help them with the work and the paperwork and to follow company procedures; that at this meeting Alleman told the employees that production was going to have to pick up; that he did service work every day as a part of his routine while in Port Sulphur; that he taught meter reader Orlando Ragas how to do service work on days when Ragas did not have a route; that "a bunch of times" he rode with John Ragas and Mackey showing them how to hang meters; that after he began working in Port Sulphur, Alleman assigned specific territories to John Ragas and Mackey; that when Alleman asked him how the employees at Port Sulphur were doing he told him to look at the trip sheets, "[t]hey talk for themselves"; that Jamison would put the work orders "on my desk and I gave them out"¹⁷ (emphasis added); that the work orders were distributed according to territory; that if Ragas went into Mackey's territory or vice versa that had to come from Alleman, and Provenzano did not make any independent judgment to give either Ragas or Mackey assignments in the other's territory; that he did not authorize overtime but rather Mackey and John Ragas took turns a week at a time; that he did not recall an incident involving Ragas assertedly being asked to spot a line for parish crew and then being told to come back and pick him up for that job; that he did not recall ever stating that Jamison was to put work on his desk because he was supervisor; that she put the work on his desk because Alleman wanted him to know where the servicemen were working; that he did not recall making a statement to the effect that supplies could not be given out to a construction crew because he was the supervisor of the supply room and the supplies were not to be given out unless he authorized it; that he never observed Ragas outside his assigned territory during the workday; that he recalled an incident when service was cut off to a row of houses in the Buras area; that John Ragas had duty that night and he worked the overtime because it ran after 5 p.m.; and that he was with Ragas on this job. On cross-examination Provenzano testified that he was in Port Sulphur for 8 months; that when he went out on service calls he did not complete trip sheets; that John Ragas and Mackey turned in their trip sheets to him and he kept a record of them; that sometimes when Alleman came to Port Sulphur he was wearing a uniform which was the same color as Provenzano's; that while he worked in Port Sulphur he "pulled" weekend duty but he did not use a beeper since he was always home; that he spoke with Alleman almost every day about how things were going in Port Sulphur; that he went with Ragas on service calls "any number of times" but he had no idea whether this occurred 50 times or 10 or 5 times; that a great deal of training was involved with the servicemen; that he did not tell John Ragas or Mackey which jobs they should do first; that he called the servicemen on the radio to go to another job; that Alleman told him and the servicemen and he reminded the servicemen that leaks are taken care of first; that he never told the serv-

¹⁵ Subsequently Allen testified, when asked if Provenzano acted as a supervisor, that Provenzano was maybe more of a overseer who made sure that Respondent's standards were met. Allen also testified that Provenzano told him which job to work and he would move him from one job to another.

¹⁶ Respondent's counsel had to ask Provenzano twice whether he was told he had the authority to direct their work since the first time the question was asked Provenzano did not reply.

¹⁷ Subsequently, on cross-examination, Provenzano testified that the service orders would be placed on his desk at Respondent's Port Sulphur facility. Then Provenzano testified "[n]ot mine. In Mr. Alleman's office"; and that he occasionally used that office.

icemen to wait for the people from the parish after spotting a line; that he reviewed Ragas' and Mackey's service orders, trip sheets and complaint/request forms to make sure that they were filled out properly and then he would turn them over to Alleman; that he did not go out that often by himself, in special cases he would go out alone and catch gas hose leaks; that he did service work every day by himself; that he went out with a serviceman and he did his share of the work; that unlike John Ragas and Mackey he did not go out and do service work alone; that he just went out alone on emergency work; that when he had lunch with Alleman and Alleman asked how things were going he would tell Alleman to check the timesheets; that he did not take service orders for himself at the beginning of the day; and that depending on the workload, he went out every day with the servicemen on a truck.

When called by Respondent, Alleman testified that he never told Provenzano that he was to be the supervisor of the servicemen in Port Sulphur; that he never told the servicemen in Port Sulphur that Provenzano was their supervisor; that Provenzano did not have authority to discipline, hire, fire, promote, and only relayed requests for overtime and time off to Alleman for Alleman's approval or disapproval; and that when he would telephone Provenzano and ask him about John Ragas' performance, Provenzano would read off a couple of jobs off Ragas' trip sheet.

Koch testified that he was never asked to nor did he ever authorize Provenzano to be classed as a supervisor.

Alleman testified, when called by the General Counsel, that on the day Provenzano started at Port Sulphur Alleman told John Ragas that since the storeroom, the charts and the bank run were being assigned to Provenzano, Alleman expected Ragas' production to improve. John Ragas testified that the charts were handled by an employee from Harvey, Louisiana, and Respondent began using a 7-day chart instead of a daily chart; that Alleman did not talk to him and Mackey about production; and that he never told Alleman that he could not do all of his serviceman work and still do the supply room, the bank runs, and the charts.

When subsequently called by Respondent, Alleman testified that when he spoke with John Ragas the day Provenzano came to Port Sulphur Alleman told Ragas, "I am going to be quite honest . . . if it keeps on like it is I won't—you know, I can't justify keeping you all on if I can't get the work out."

According to John Ragas' testimony, on December 23, 1988, while he was working with Mackey, Mackey's beeper went off. Ragas, not Mackey, was on call. Ragas telephoned dispatcher Stewart and explained that he was on call. Assertedly Stewart said that "we never know who is working because they never have anything right up here."

On December 24, according to the testimony of John Ragas, he found out that Mackey was being beeped notwithstanding the fact that Ragas was on call. Ragas telephoned the dispatcher who indicated that he had tried, unsuccessfully, to contact Ragas by beeper. Later that day he learned that the dispatcher was dialing a long-distance number for his beeper.

John Ragas testified that somewhere around December 28 he was filling out a report with Provenzano regarding a fire which occurred at a job on December 24; that Provenzano told him that he had to add something to the report and he

told Provenzano that that was not the way it happened; that Provenzano left him and apparently went to the office where Alleman was; that when he returned, Provenzano told him that he had to change the form; that he told Provenzano that because of his union involvement he could not fill the report out the way Provenzano wanted; that Provenzano again left with the report and returned telling Ragas that he had to change the report; that he then told Provenzano that he would call his union representative and if he said it was okay Ragas would do it; and that Provenzano then said that he should go with that Union and fill the report out any way he wanted. Provenzano first testified that he did not recall such an incident. On cross-examination, Provenzano testified that he was told by Alleman, who was in Port Sulphur at the time, that the fire report had to be changed; and that he assisted Ragas in making the changes. And on redirect Provenzano testified that Ragas did not refuse to correct the report; that Ragas did not say that he was not going to change the report because he wanted to talk to his union representative; and that Ragas never discussed unions at all with him.

On December 29, according to the testimony of John Ragas, Provenzano told him that the dispatcher had been trying to get Ragas on his beeper the day before. Assertedly, John Ragas told Provenzano that the dispatcher did not know how to dial the beeper, and that he did not appreciate the dispatcher saying to Ragas' wife that she always says that Ragas is not home and it seemed to him that she was lying and he would take it up with Ragas' supervisor. Assertedly, Provenzano then said that it seems like the dispatchers always have a problem reaching Ragas' beeper. Ragas testified that he then said:

[Y]ou see, that is why I was telling you about it. They needed you—you need, I said, to straighten up some of this mess that they got going on.

And he replied to me that you keep talking that union talk you going to find yourself in the soup line. So I told him if it was going to be that, so let it be that. And I left . . .

that Provenzano dialed the number for the beeper and it did not work; that Provenzano eventually got the beeper to work indicating to Ragas that, regarding his and Mackey's beeper, one was a long-distance number and one was not a long-distance number; that in early January 1989 Alleman changed the beepers; that the new beepers had new numbers; that at that time Alleman indicated that he was going to try a different type later; and that he did not recall any problems with the beeper after that.

When asked by Respondent's counsel if he told John Ragas that if Ragas did not stop the union talk, he would be in a soup line, Provenzano answered, "I don't know nothing about no union." Provenzano went on to testify that he never responded to Ragas that if he kept talking that union talk he would be in a soup line; that Ragas never talked to him about his activities in the Union; that Ragas never indicated that he was a member of the Union; that Ragas never said that the Company needed a union; that he talked to John Ragas about his trip sheets telling him that Alleman was not going to be satisfied with his job performance; that more specifically, he talked to John Ragas about the work he did

on December 21, 1988, as reflected on the daily worklog or trip sheet for that day, Respondent's Exhibit 4; that he told Ragas that Alleman "wasn't going to buy this and there wasn't enough work being caught in eight hours"; that Alleman always called him and asked him how the servicemen were doing and "I said I am going to check the trip sheets"; that in his opinion, the trip sheet for December 21 does not reflect 8 hours of work by a serviceman; and that Ragas said that that was the best he could do and then Ragas said that he could not work under those conditions, "[h]e would rather be in a soup line." When asked about the entry about spotting a line for the Port Sulphur waterworks, Provenzano testified, "[s]potting those lines for the waterworks—they know where they are more than we do, and there is nothing but plastic down there anyhow. It don't take that long."

Regarding the December 21, 1988 trip sheet, John Ragas testified that shortly after reporting for work Provenzano told him to accompany him to speak to someone about a transmission for Provenzano's son's car; that later Provenzano drove him back to Respondent's facility and then he began doing those jobs listed on the trip sheet for December 21; that at 9 a.m. he arrived at a site to spot or locate a line for the Port Sulphur waterworks; that some difficulty was encountered in finding the underground line and the job took 45 minutes; that he left the site to go to the next job and en route, 10 or 15 minutes later, Provenzano radioed him and told him to return to the site since the excavation crew had hit the underground pipe; that while he was driving back to the site Provenzano radioed him and told him to pick Provenzano up at the Respondent's facility and he would accompany Ragas to the site; that he arrived at the site a little after 10 a.m.; that Provenzano looked at the pipe that the excavation crew hit; that he recoated the involved pipe and brought Provenzano back to Respondent's facility at about 10:25 a.m.; that it then took him about 1 hour, including about 40 minutes of driving time to deliver four cut-off (discontinue service for nonpayment of bill) cards; that he then took a 1-hour lunchbreak; that he then went back to the warehouse arriving about 1 p.m.; that he left the warehouse at 1:10 p.m. and drove for about 20 minutes to a rehang job in Diamond, Louisiana, which job took about 45 minutes; that he then drove to the church listed on the trip sheet and rehung a meter, which he could not turn on because there was no one present at the church; that he drove for 15 minutes to his next job in Diamond, which job was a turn-off that took him between 10 and 15 minutes; that he drove for about 20 minutes to his next job in Port Sulphur, which was a turn-off that took between 10 and 15 minutes; that he drove for 25 to 30 minutes to his next job in Empire, which installation took 1 hour; that Provenzano radioed him and told him that someone was at the church so Ragas drove for 45 minutes back to the church and turned on the gas; that it was near quitting time so he returned to Respondent's facility; and that Alleman never spoke to him about his December 21, 1989 trip sheet. Subsequently, John Ragas testified that Provenzano never discussed the December 21, 1988 trip sheet with him.

General Counsel's Exhibit 2 is a semimonthly overtime report of Respondent for the period ending January 10, 1989. Alleman testified that his signature at the top of the form signified that he was in charge of the group involved, namely,

Mackey and John Ragas. Alleman testified that normally he signs the form at the top *before* the servicemen put their overtime on the form; and that regarding Port Sulphur, the servicemen fill it out and then it is sent to him to sign. General Counsel's Exhibit 3 is a similar form for the period ending January 25, 1989. "Pro" for Provenzano appears where Alleman normally signs the form. Provenzano testified that he wrote "Pro" on General Counsel's Exhibit 3; that this does not indicate that he was authorizing overtime; and that it indicates that "I checked it out—sent it to Mr. Alleman and he checked it." On cross-examination Provenzano testified that he did not know whether Alleman checked the January 25, 1989 overtime report and Alleman's initials are not on the report.

When called by Respondent, Alleman testified that the trip sheet for January 20, 1989, Respondent's Exhibit 6, has a note which reads "talked to J.C. about amount of work not consistent and no reasonable explanation. 1/23/88" (emphasis added); that his signature appears after this note; that the trip sheet also includes the note "talked with Pro. he also can give no reasonable explanation for amount of work being done"; that while the trip sheet notes "Rain" he talked to Provenzano who assertedly told him that it rained for about an hour or so; that even with the rain the jobs listed do not represent 8 hours of work;¹⁸ and that he did not recall talking to Ragas but there was no doubt in his mind that he did talk to Ragas as the note indicates.

On rebuttal, John Ragas, with respect to the January 20, 1989 trip sheet, testified that that day it was raining hard and the policy was for him to work around the warehouse unless it was drizzling in which case he would leave the facility and do the work assigned; that the rain let up after lunchtime and he left after speaking to Provenzano who told him if he could work in the drizzling rain to go ahead; that Mackey left to do outside jobs about the same time; that he left the warehouse about 1:10 p.m.; that he drove for about 10 to 15 minutes to Empire where he took 1 hour to install a meter and turn the gas on; that he drove 15 minutes to Happy Jack where he spent 10 minutes on a turn-off; that he then drove back to Port Sulphur to do an install but the installation of the gas line was not finished at that time and so he could not do the install; that he drove 15 minutes to Happy Jack where he spent 10 minutes on a turn-off; that he drove for 10 to 15 minutes to Diamond, where he turned on service after sitting in the truck for 5 minutes because of the heavy rain; that he then drove 15 to 20 minutes to Happy Jack Campsite to do a turn-on which took about 20 minutes because he had to light the pilots "and everything"; that he then drove 15 to 20 minutes to the church listed and did a restore which took 35 to 40 minutes because there was a problem with the piping on a new stove and he had a problem lighting it; that on the way back to the warehouse he stopped at the aforementioned install job and did it since the gas line had been completed; and that he returned to the warehouse at about 5:20 p.m. The first entry on the involved trip sheet is "Rain." Over the objection of counsel for Respondent, General Counsel's Exhibit 10 was received in evi-

¹⁸ Alleman estimated that the jobs listed would have taken a total of three to three and one half hours, including driving time. Provenzano did not corroborate Alleman regarding how long it rained. Consequently it is the word of one who was not in the involved area at the time against the word of someone who was in the involved area at the time.

dence. It is the trip sheet for Mackey for January 20, 1989. The first entry on the trip sheet is "Rain." Thereafter there appear to be four service orders listed, namely, two turn-offs, one turn-on and one "notify NSF." As discussed above, John Ragas' trip sheet for the same day contains what appear to be eight service orders, namely, two installs, three turn-ons, two turn-offs, and one restore.

On January 30, according to the testimony of John Ragas, he discussed with Provenzano, in the presence of Mackey, the possibility of having Respondent give them credit toward seniority at Respondent for the years they worked for Delta Gas. Provenzano told him that Ragas did not want to bring that up. Ragas testified that he then said that he was going to telephone his union representative and see if he would speak to somebody about it; and that Provenzano said, "You don't want to do that either, and he got mad and walked off."

On January 31, 1989, John Ragas reported that his truck had a problem. Allen testified that pursuant to instructions from Alleman, he brought his truck from Marrero and switched it for John Ragas' truck which he drove back to Marrero for repairs. David Suffy, who was formerly employed by Respondent as a mechanic at Marrero, testified that he worked on John Ragas' truck in January 1989; that the work he performed was a regular maintenance inspection; and that the console or secretary¹⁹ was not in the truck at the time. Allen could not recall whether or not the console was in Ragas' truck when he drove it to Marrero and subsequently back to Port Sulphur.

According to Alleman's testimony, in January 1989 he had his final talk with John Ragas about his production. Alleman testified that he had been at Port Sulphur the week before and he was totally dissatisfied; that during his January 1989 talk with Ragas he told Ragas that he did not see any improvement in production notwithstanding the fact that he assigned the charts and the storeroom to someone else; that he told Ragas that he should be doing a lot more maintenance work than he was doing; that Ragas completed the service orders which were given to him but he did not, when he finished his specifically assigned work for that day, change meters and regulators which was called for by Respondent as part of its program to upgrade the system it acquired over from Delta; and that when he spoke to John Ragas in January 1989 Alleman was referring to between three and five trip sheets. When asked by the General Counsel whether he showed Ragas the trip sheets during this discussion, Alleman testified as follows: "I would have probably—and what I did was pull out one trip sheet and question him about it." Also, Alleman testified that he relayed his dissatisfaction with this and possibly some other work Ragas did on other trip sheets; and that he did not ask Ragas to explain each of the jobs that he had listed on that trip sheet. Alleman thought that he had reviewed the back-up information for the trip sheets on this occasion.

John Ragas testified that sometime in January 1989 he was talking with a member of the crew and the location of the union hall came up; and that Provenzano overheard the conversation and he said "you are back here talking that union talk again." Provenzano testified that he did not say to

Ragas "there you go talking that union talk again"; and that he did not recall this conversation.

On February 1, 1989, according to the testimony of John Ragas, he returned to the Port Sulphur facility at 1 p.m. to see Provenzano. He testified that he was driving Allen's, truck; that Provenzano did not arrive at the facility until 1:30 p.m.; that he asked Provenzano if he had anything specific that he wanted Ragas to do; that Provenzano asked him what he was doing at the facility at that time of day; that he told Provenzano that Provenzano told him to come and wait to see if he had anything specific for him to do; that Provenzano kept looking at his watch and Ragas said, "Your daddy must have been a watch maker"; that he then said,

[Y]ou are going to try to make something out of this . . . but I am only following your orders.

You told me to come here and wait on you. I said, you see why they need a union in here, I said, to straighten out some of this mess that is going on;²⁰

and that Provenzano just said that he did not have anything for him. Provenzano testified that Ragas did say that Provenzano's daddy must have been a watchmaker; that he told Ragas that "if he wouldn't be in the yard all the time, I wouldn't have to look at my watch"; and that he was looking at his watch "[t]o see what he was doing in the yard that evening when he was supposed to be out on a job." When asked by Respondent's counsel whether Ragas said, "[y]ou see why we need a union here to clear this up," Provenzano replied, "No sir. Don't know nothing about that." Provenzano also testified that Alleman told Ragas to be back in the yard at 1 p.m. to meet Provenzano on a daily basis; that he did not tell Ragas to wait until he got there; and that this incident occurred around 3 or 3:30 p.m. when he had just driven into the yard in his truck.

On February 2, 1989, John Ragas was terminated. When called by the General Counsel, Alleman testified that he decided to terminate John Ragas; that on the morning of February 2, 1989, Provenzano told him that Alleman might want to take a look at the trip sheets again; that Ragas was terminated because he did not apply himself on the job; that during John Ragas' employment with Respondent between September 1988 and February 1989 Alleman went with John Ragas to his jobs three times; that he told John Ragas and Mackey to fill out their paperwork and get out of the office as soon as possible in the morning; that, nonetheless on several occasions when he visited Port Sulphur they were still in the office at 9:30 or 9:45 a.m.; that on several occasions John Ragas would come back to the office during the day; that several of John Ragas' trip sheets²¹ demonstrated that he did not do a "very good day's work"; that on several occasions the trip sheets would have four, five, or six jobs which should have taken a total of no more than 3.5 or 4 hours; that he saw trip sheets of John Ragas of this sort about a dozen times between November 1988 when the use of such reports started and February 1989 when Ragas was terminated; that he spoke to John Ragas about the amount of work on the trip sheets on at least four occasions; that in Novem-

¹⁹ Apparently it is some kind of a compartment for writing on and for storing papers.

²⁰ Ragas testified that he did not recall ever saying anything about the Company's performance and the need for a union to Alleman.

²¹ Alleman testified that trip sheets give the address where the service was rendered and the type of jobs that the serviceman does on a given day.

ber 1988 John Ragas told him that he could not handle the duties he assigned to Ragas because he had storeroom duties and was responsible for changing charts;²² that it is possible that something can happen on the job, i.e., a leak, that would cause the serviceman to be at the site longer than anticipated for the original job; that by looking at the trip sheet only, one would not be able to tell what happened on a job; that in early November 1988 he spoke with John Ragas and Mackey telling them that production should be better; that he included Mackey because he also had trip sheets which Alleman was not satisfied with; that in late November or early December 1988 he spoke with John Ragas again about what his trip sheets showed, and this is when Ragas indicated that he had other jobs to do at the facility such as maintaining the storeroom, changing the charts, and sometimes making bank runs; that within a couple of weeks he assigned the bank run, and the handling of storeroom matters, among other things, to Provenzano; that on February 2, 1989, he looked at the six or seven trip sheets John Ragas had handed in since the last time they had talked; that there was no excuse for the amount of work shown on the trip sheet for February 1, 1989; that he did not review the other documentation for the work done on February 1, 1989, by Ragas; that the trip sheets do not show how much time is spent in travel; that he based his decision to terminate Ragas "on several trip sheets and several conversations that . . . [he] had with . . . [Ragas] and a generally accepted feeling that . . . [Ragas] was not applying himself in his job"; that when he spoke to Ragas about his performance Provenzano was present; that he asked Ragas why there were only four or five jobs on the trip sheet when the production should have been more; that no customer complained about any of the jobs on the trip sheets; that he did not give Ragas a termination sheet; that he had never given Ragas a written performance warning;²³ and that in a period of 7 years he terminated probably about six people with five terminated for drug related violations of company policy and the sixth was a meter reader who could not reduce his very high error rate.

Regarding February 2, 1989, John Ragas testified that when he arrived at work that morning he noticed that his truck which he had sent to the shop was back; that a folder was missing from the truck; that he asked Provenzano about it telling him that the folder contained some union cards that Ragas was supposed to give to some people;²⁴ that he also told Provenzano that the folder contained some notes he had about some different conversations and a doctor's report on his injured finger;²⁵ that Provenzano said that he would

check with the foreman about it; that he telephoned Alleman about it but he did not get through to Alleman; that he left the facility to do some work; that shortly after 1 p.m. Alleman came over the short wave radio and asked him how long it was going to be before he came back to the office; that Provenzano had assigned him to work in Mackey's area that day; that he went back to the office; and that

[W]hen I came into the warehouse, Braid [Alleman] was there, and Pro [Provenzano] was there. And Braid asked me what I did the day before, which would have been the 1st. And so I told him—I was explaining to him what I did. And he asked me what I was doing in this particular area, which would have been Triumph.

And I told him I had a green order to go and pick up a meter that was—then he told me—he said, that is not your area. That is . . . Mackey's area. I said, well, Pro give it to me to go down there, I said, because August was at a meeting.

[Alleman] said, well, I don't want you in August's area. He said, you are supposed to work in your own area. Your area is from the bridge up. So I said, well—I said, I had a green order to go down there. I said, Pro give it to me. And he looked at Pro, and he asked Pro—he said, didn't I have two other service men down in that area?

And Pro told him, yes. And so then he asked me—he said, well, what else you did? He said, look at this trip sheet. And I wanted to go and explain to him about the trip sheet. Then he said, all right. Come back in later. He said, go back out to work.

Come back in later, and we are going to talk more about it. And I was about to leave, and then he said, wait. He said, it is just not working out. So I asked him—I said, what is not working out? He said, it is just not working out. He said, I don't think the company can use you any more.

Ragas testified that Alleman had two trip sheets on his desk, namely, the ones for January 31 and February 1, 1989; that no one asked him about the trip sheets other than why he was in Triumph; that Alleman did not ask Provenzano if he had given Ragas a green order to go out to Triumph; that Provenzano gave him a ride home and told him "I kept telling you about that union talk. . . . you kept talking . . . and I said it was going to get you in trouble"; that he never received anything in writing about his termination; that he never received any written reprimands or letters about his performance or his conduct on the job; that no one ever told him that he did not complete enough work in a day or about being too slow on the job; that Alleman never went to a job with him; that Provenzano went on two or three jobs with him; and that the only formal evaluation he received while working at Respondent's was a certificate of appreciation from Koch in October.

John Ragas, using the trip sheet and two service orders, General Counsel's Exhibits 5, 6, and 7, described exactly

²² Alleman testified that John Ragas did more work changing charts than Mackey.

²³ Hanrath testified that Respondent does not have a formal disciplinary program that would require a personnel file filing; that there have been cases where written reprimands have been made part of the file but it is not a routine; that supervisors are always advised to follow three rules as it relates to discipline, namely "document, document, document"; that usually the documentation would be for the purpose of the supervisor's own record; that rarely is any documentation given to the employee; that in those unusual cases where the reprimand becomes a part of the personnel file, it is usually presented to the employee for his review and signature before it is placed in the file; that such documentation could include observations by a supervisor; and that it is not Respondent's practice to give the employee a termination slip.

²⁴ The cards were membership cards for individuals who were already in the Union.

²⁵ Ragas testified that he told Provenzano the contents of the folder because Provenzano asked him what was in it. The affidavit Ragas gave to the Board

indicates that he told Provenzano that it was just personal stuff, "I did not tell Pro what it was." Ragas testified that he later recalled telling Provenzano the contents of the file.

what he did from the beginning of his workday on February 1, 1989, to the end of the workday.²⁶

On cross-examination, John Ragas testified that before February 2, 1989, Alleman never indicated to him that he was not producing as much work as expected; and that before February 2, 1989, Alleman never talked to him about his "work logs"²⁷ and the amount of work he was performing on a specific day. Ragas also testified that he had been talking to Mackey, trying to get him to join the Union.²⁸

Provenzano testified that he did not determine whether John Ragas was performing a full day's work on a regular basis for the Company but rather he turned Ragas' February 1, 1989 trip sheet over to Alleman for that determination "because he was the supervisor." When asked during the trial for his opinion of John Ragas as a worker, Provenzano testified that Ragas could have done better; he did not apply himself. With respect to John Ragas' termination, Provenzano testified that Alleman telephoned him the night of February 1, 1989, and asked him how things were going; that he told Alleman that he should come down and check the timesheets;²⁹ and that he did not take or see any documents relating to the Union or conversations Ragas had in John Ragas' truck. When asked by counsel for Respondent "[d]id he [Ragas] tell you on that morning before Mr. Alleman came there, that he was missing certain personal papers from his truck," Provenzano replied, "[N]o, sir. Knew nothing about that." Provenzano went on to testify that Alleman did not ask him to recommend whether Ragas should be terminated and he did not recommend that Ragas be terminated; that Alleman did not tell him that Ragas was going to be terminated before Alleman took that action; that he was present during the meeting with John Ragas and Alleman when Ragas was terminated; that Alleman told Ragas that he was not satisfied with Ragas' job performance; that he could not remember Ragas' response other than that Ragas said that that was the best he could do; that he did not recall instructing Ragas to go into Mackey's territory to pick up a meter on one of the trips included on General Counsel's Exhibit 5; that he was surprised that Ragas was terminated; that Alleman asked him to drive Ragas home; that on the way to Ragas' house he told Ragas, "[W]ell, I told you one day it was going to catch up with you"; that he meant Ragas' job performance when he made this statement; that during the ride to Ragas' home he asked if he

could come back to the office and get some important papers off his truck; that Ragas did not say what important papers they were; that he said yes; that when he returned to the office Alleman told him to go get any service orders Ragas had in the truck and bring them into the office; that he found a bunch of trip sheets in Ragas' truck; that he did not find any union membership cards or anything that looked like notes of conversations; and that he found the trip sheets in the fold-over seat. On cross-examination, Provenzano testified that he did not ask John Ragas what each of the jobs on the trip sheet for February 1, 1989, involved; that based on his own experience the jobs listed on General Counsel's Exhibit 5 should have only taken 3 or 4 hours; that he did not recall exactly where the pressure checks performed by Ragas on February 1, 1989, were located; that something could definitely happen at the site which could cause the serviceman to be delayed there; that in the Happy Jack area the PVC pipe was always under water when the water rises; that it was easy to break a PVC pipeline there; that he told Alleman that he thought John Ragas could have done more work; that he told Alleman this every time he talked to Provenzano about the trip slips; that he had discussed Ragas' trip sheets with him up to four times; that up to three times he told Ragas that his performance was going to catch up with him one day; that Alleman telephoned him the day before Ragas was terminated and Alleman asked how things were going; that he told Alleman that it was not improving any and that he should come down and check the trip sheets himself; that Alleman did not ask about a specific employee and he did not refer to a specific employee when he said things were not improving; that when Alleman came to check the trip sheets before this he looked at Ragas' and Mackey's; that he did not recall whether John Ragas had a compartment for papers in his truck; that other than February 2, 1989, he never sat in on a meeting between Alleman and John Ragas regarding the latter's job performance and Alleman never mentioned to him that Alleman held such a meeting with Ragas; that Ragas has never been given a job outside of his territory; that if one of the jobs listed on Ragas' trip sheet for February 1, 1989, was in Buras it would have been outside of his territory; that he did not know anything about that job; that he gave the service orders to Ragas for the other jobs listed on the February 1 trip sheet but he did not recall this one in Buras; that Mackey did attend a meeting that day and he did not come into work; that he checks the trip sheets which the servicemen turn into him; that he did not discuss with Alleman that the Buras job was not in Ragas' territory; that he did not know if the question of this being outside of Ragas' territory came up on the day Ragas was terminated; that he did not recall Alleman asking Ragas anything about his trip sheet for February 1 or 2, 1989; that in looking at any individual trip sheet it might be difficult to determine how much time a serviceman might have to spend on a job without actually knowing the specifics of the job; and that in reviewing the trip sheets of Ragas and Mackey he noticed a substantial difference in the work reflected in their trip sheets over a 1-month period.

Alleman, when called by Respondent, testified that he did service work for 20 years and with rare exceptions he knows how much time it would take to complete a turn-on, turn-off and install or change a meter; that originally he had planned on going to Port Sulphur on February 2, 1989; that

²⁶ John Ragas testified that on the last job of the day when he went to change the meter and regulator the line was broken and he had to go to the warehouse to get a plastic fitting. Provenzano testified that occasionally when a meter and regulator are changed the PVC plastic pipe has been in the ground so long that it can "pop like popcorn in the ground"; that the pipe in the Happy Jack area is under water when the water rises; and that it takes from 20 minutes to an hour to install a meter without special problems.

²⁷ This term was used by Respondent's counsel and he later changed it to trip sheets. Alleman testified that there were one or two occasions when he discussed the trip sheets with John Ragas with Provenzano present.

²⁸ Ragas testified that he "would say yes" that he had started organizing employees at Respondent when he was terminated. But in his statement to the Board Ragas indicates that he was not engaged in organizing.

²⁹ According to Provenzano when Alleman asked how things were going Provenzano never said, "Things are good, bad . . . are working okay [or] [w]e have a lot of work" but rather he would only say "[l]ook at the trip sheets." Subsequently, Provenzano testified on cross-examination that he spoke with Alleman every day and that he would tell Alleman that things were running smoothly or that not enough work was getting done. According to Provenzano's testimony, normally the work assigned was completed on that day.

Provenzano telephoned him and told him and said that you may want to come down here; that when he arrived in Port Sulphur he reviewed 10 or more of Ragas' trip sheets for consecutive days; that he called Ragas in to talk to him and when he saw that "it wasn't going anywhere" he decided to terminate Ragas; that prior to that he had not received any authorization to terminate Ragas; and that on three or four different occasions he spoke to Koch about the job performance of the servicemen at Port Sulphur, indicating to Koch that while Mackey was attempting to do things the way Respondent wanted them done, Ragas "was not really making the turn." When asked, "[d]id you call Mr. Koch that morning and tell him you were going to terminate Mr. Ragas," Alleman testified, "I tried to reach Mr. Koch in his office prior to talking to Ragas, and he was not in that day." Alleman also testified that no one ever told him that they had found some papers in John Ragas' truck which indicated that he was involved in union activities; that when Provenzano returned from taking Ragas home, he asked Provenzano to remove any service orders or requests from Ragas' truck; that Provenzano found a clip board with a couple of requests on it and also he found copies of trip sheets; and that he was not aware of any union activity on the part of John Ragas prior to the time he terminated him.

Koch testified that he was not aware prior to the time John Ragas was terminated that he was going to be terminated; that he was aware of performance problems which Alleman felt he was having with Ragas since Alleman informed him of them on two or three occasions; that the problems related to productivity; that Alleman never told him prior to Ragas' termination that Alleman was aware or concerned about any union activities on the part of Ragas; that he was not at work the day Ragas was terminated but it was not necessary for Alleman to obtain permission from him before terminating Ragas; and that he spoke with Alleman the day after Ragas' termination and Alleman told him that he had reviewed Ragas' trip sheets and he was not satisfied with the productivity.

On rebuttal, John Ragas testified that he was never counseled about the amount of work on his trip sheets and Provenzano never told him that Alleman was not satisfied with the amount of work he was doing and he was going to have a problem as a result.

Alleman sponsored a performance review form on Provenzano which has a completion date of February 28, 1989. Respondent's Exhibit 7. Alleman wrote the following on the form: "Pro is assisting me in a much needed area, providing new L.G.S. employes in the Port Sulphur area, with service instructions and guidance. I recommend a raise of \$113.00 a month (1356.00) for Pro."

Analysis

Taking the last of the violations alleged in the complaint first, one must wonder why Alleman came to Port Sulphur on February 2, 1989. Alleman testified that he had planned to come to Port Sulphur on February 2 even before he spoke to Provenzano. But as noted below, in my opinion Alleman was not a credible witness. Regarding the conversation Alleman and Provenzano had just before the visit, the testimony of these two witnesses conflicts. More specifically, Alleman, when called by counsel for the General Counsel, testified that on the morning of February 2, 1989, Provenzano told him that Alleman might want to take a look

at the trip sheets again. Provenzano testified that Alleman telephoned him the night of February 1, 1989, and asked him how things were going, and he told Alleman that he should come down and check the trip sheets. Provenzano also testified that Alleman telephoned him the day before Ragas was terminated and when Alleman asked how things were going, Provenzano told Alleman it was not improving any and that he should come down and check the trip sheets himself. Subsequently, Alleman testified that Provenzano telephoned him and said you may want to come down here. Did Provenzano, as asserted by Alleman, telephone Alleman? Would not this be a change in routine in that Provenzano testified that normally Alleman telephoned him? If Provenzano did initiate the telephone call on February 2, 1989, to Alleman, did he say to Alleman, as Alleman testified, that "you may want to come down here?" Was the reason for Provenzano's telephone call and his statement to Alleman that he "may want to come down here" John Ragas' statement to Provenzano that Ragas was missing some union cards? As pointed out by Respondent on brief, the resolution of what happened between Provenzano and Ragas basically comes down to the credibility of Ragas versus Provenzano. Respondent asserts that Provenzano's story remained the same throughout his testimony while Ragas testified inconsistently on more than one occasion. Respondent cites two instances when Ragas assertedly testified inconsistently. One involves the situation at hand.³⁰ It will be treated below. But first it should be noted that contrary to Respondent's assertion, Provenzano's story did not remain the same throughout his testimony. One need only review the summary above to see that just the opposite is the case. The inconsistencies, internal conflicts, and changes are numerous. Provenzano seemed to be guided by the idea that he could not admit anything which would indicate that he was a supervisor. His testimony regarding the December 21, 1988 trip sheet was incredible in that he never denied that at 8 a.m. he took John Ragas, who should have been working, to see someone about a transmission for Provenzano's son's car. Regarding that same trip sheet, Provenzano testified that he did not recall an incident involving Ragas assertedly being asked to spot a line for a parish crew and then being told to come back and pick up Provenzano, so that he could see what damage occurred when the excavation crew struck a gas line. Provenzano, as noted above, testified that "[s]potting those lines for the waterworks—they know where they are more than we do, and there is nothing but plastic down there anyhow. It don't take

³⁰ The other involves the assertion by Respondent that John Ragas' February 1989 affidavit to the National Labor Relations Board (the Board) indicated that Provenzano never went on service calls with him but at the hearing herein Ragas allegedly stated that they did go on jobs together. The following is the testimony on this matter:

Q. Did you ever indicate to counsel for the General Counsel that Pro [Provenzano] did not go with you on any of your jobs?

A. No.

Q. Let me show you page 16 of this statement. Would you read this line I am pointing to? It begins with the word Pro. A. Yes. "Pro did not go with me on my jobs."

Q. Did he go with you on some jobs?

A. Well what I meant about that is that he didn't come out and work with me, like, from 8:00 to 5:00. That was my understanding of what they were asking me.

Ragas explanation is reasonable, especially in the light of the fact that elsewhere Ragas did testify regarding occasions when Provenzano was with him at a jobsite.

that long.” In other words, Provenzano did not testify at all about taking up Ragas’ worktime to see a man about a transmission for Provenzano’s son’s car and the best Provenzano could manage about the excavation incident was not an unequivocal denial but rather only that he did not recall the incident.³¹ Ragas, whose testimony was very specific, is credited regarding the incidents of December 21, 1988. Contrary to his testimony, Provenzano never spoke to John Ragas about his December 21, 1988 trip sheet. How could he when Provenzano himself was responsible for needlessly taking up some of John Ragas’ worktime that day?³² Is it reasonable to expect that someone would have an employee, during worktime, accompany him on a nonwork related matter and then turn around and complain to the employee, in effect, that he should have spent that time working?

Regarding John Ragas’ credibility, as pointed out by Respondent, his affidavit to the Board indicates that he did not tell Provenzano what was in the folder only that it was personal stuff; and that this was added by Ragas to the affidavit to make it clear that he had not told Provenzano what was allegedly in the folder. Respondent points out that when he testified, Ragas indicated that he did tell Provenzano the contents of the folder and that his memory of the event was better in November 1989 than in February 1989. Ragas testified as follows regarding this matter:

Q. In this statement that you gave to the counsel for the General Counsel, I am reading from page 14 of that statement regarding this incident. It says, “He” meaning Pro, “said he didn’t know anything about it. He said he was going to call and find out.” That is correct. Is that right?

A. Yes.

Q. “I left and went to work. Regarding the contents of the folder, I just said it was personal stuff. I did not tell Pro what it was.”

A. I did tell him. Yes.

Q. So this is wrong.

A. Well, through a conversation I had with her after, I remembered more about it.

Q. Well, let me show you this statement because the phrase or the statement regarding the contents of the folder—“I just said it was personal stuff. I did not tell Pro what it was”—is written between the line. In fact, it was added in and initialled by you. Isn’t that right?

A. Yes.

Q. In fact, this statement was written—hand written out by Ms. Frederick. Isn’t that right?

A. Yes.

Q. And you were given it and asked to go through it and review it to make sure it was correct.

A. Yes.

Q. And you made some deletions to it, and you asked that some additions be made, didn’t you? And this was an addition that you put in to be—to make this clear that you did not tell Pro what was in that truck in the contents of that pouch, did you?

A. Yes. Because at the time I didn’t recall telling him, but I did tell him.

Q. So in March of this year, two months—a month to the day almost after it happened, you insisted that she put it in, and now your recollection is that that was wrong and that you did tell him. Is that what you are telling me?

A. I did tell him. Yes.

Q. Why is your memory now better than it was a month after it happened?

A. Because of going through it over and over.

Q. Over and Over.

A. Right. And I am recalling different incidents that happened.

Ragas’ explanation of this change is reasonable in my opinion. What one can recall when discussing a number of things at one time may not always be as accurate as what one recalls when reflecting at length on one specific thing. Respondent was only able to cite a few instances of alleged inconsistencies in the testimony of Ragas. As noted, above, there are many regarding the testimony of Provenzano.

In my opinion John Ragas mentioned the union cards to Provenzano on February 2, 1989, Provenzano telephoned Alleman, Alleman drove to Port Sulphur, and Alleman was bothered enough by what Provenzano told him to pick up the radio and call Ragas to ask him how long it was going to be before he was going to come back to the office. John Ragas was fired because of his union activities. The alleged justification regarding the trip sheets is a fabrication. As noted above, Provenzano was not a credible witness. Alleman also is not a credible witness. He did not tell John Ragas the day that Provenzano began working at Port Sulphur that Ragas would be terminated if he could not get the work out. Provenzano never testified that he was aware of such a warning. All of Alleman’s testimony regarding discussions with John Ragas with respect to trip sheets dealing with work prior to the end of January 1989 was fabricated. Alleman attempted to bolster his testimony indicating that Provenzano was there during one or two of the discussions Alleman had with John Ragas regarding trip sheets. Provenzano testified that he was there only once; the day Ragas was terminated. Also, Provenzano testified that Alleman never mentioned to him that he had a meeting with Ragas regarding trip sheets. In my opinion, Alleman wrote the note on the January 20, 1989 trip sheet well after January 23, 1989. It is quite reasonable for a person to mistakenly write 1988 for the first few days of 1989. But for a person to write 1988 for the year on January 23, 1989, is stretching it. Provenzano did not corroborate Alleman about the January 20, 1989 trip sheet.

And finally, Koch’s testimony that Alleman previously discussed the fact that John Ragas’ production was not acceptable cannot be credited. Koch was not a credible witness. His testimony that he was not aware until the hearing herein that John Ragas did not sign his application is incredible in view of the testimony of Ragas that he told Koch before he was hired by Respondent that he did not sign the application, Ragas did not sign the application, how important that signature was regarding the statements applicable as set forth in appendix A hereto, and Koch was ultimately responsible for hiring Ragas.

³¹ As one would note reviewing the testimony as summarized above, there was a lot which Provenzano did not recall.

³² Provenzano had his own company truck and there was no explained reason for Ragas to go to Respondent’s facility to pick up Provenzano when he could have used his own truck.

John Ragas was terminated for his union activity. Provenzano, as noted below, acted as a supervisor while at Port Sulphur. John Ragas' testimony regarding his conversations with Provenzano dealing with Ragas' union activity is credited. Provenzano played a very large role in Ragas' termination. It was Provenzano who summoned Alleman. It was Provenzano who explained to Alleman why he had Alleman drive to Port Sulphur. Provenzano was there when Ragas was terminated. Respondent contends that Alleman did not know of Ragas' union activity. Hanforth testified that it was general knowledge that employees of Delta engaged in organizing activities prior to the acquisition of the system by Respondent. And Alleman, as noted above, sat in a small gathering with Ragas in a coffee shop where Ragas explained why because of his union affiliation he did not sign Respondent's application for employment.³³ Everyone of Respondent's management witnesses who apparently were not involved in the termination conceded that they knew of Ragas union proclivities. As noted above, Provenzano's story was that he did not know about a union. He is not credited. Both he and Alleman knew. In fact, as noted above, Ragas' union activity was the reason he was terminated.

If the termination were not a pretext, I would find that counsel for the General Counsel had made a prima facie case in that she demonstrated that John Ragas engaged in union activity, Respondent knew, and there was antiunion animus on the part of Respondent. On the other hand, Respondent has not shown a business justification for the termination. Respondent has not shown that it would have terminated John Ragas notwithstanding his union activity.

As noted above, it is alleged in the complaint that Respondent threatened its employees with discharge if they continued to engage in activities on behalf of the union. On brief, counsel for the General Counsel contends that Provenzano was a supervisor within the meaning of Section 2(11) of the Act in that (1) Alleman introduced him to John Ragas and Mackey as their supervisor and told them that whatever came through the office, paperwork, or problems, were to go through Provenzano, (2) Provenzano gave Ragas and Mackey their assignments on a daily basis and would radio them on occasion to move them from one job to another, (3) Provenzano sent Ragas to assist Mackey on jobs and would give him instructions on whether to wait at a site for a particular reason or to go on to another service call, (4) Provenzano would tell Mackey and Ragas whether to do service work after regular hours if a call came in just before the end of the workday, (5) all completed forms, including timesheets and overtime reports, were turned into Provenzano who would review them, (6) Provenzano signed some semi-monthly overtime reports in the same place that Alleman signed, which according to Alleman, signified that the person is in charge of a particular group, (7) Ragas cited two instances when Provenzano himself said that he was the supervisor, (8) Provenzano spent a considerable amount of time in the Port Sulphur office, using the same office that Alleman had at the facility, (9) Provenzano did not have an assigned service territory while in Port Sulphur, he did not go out on many service calls alone, and he did not complete trip sheets like Ragas and Mackey, (10) Allen at one point testified that

Provenzano was sent to Port Sulphur to supervise, (11) Provenzano admittedly used his own discretion and he did not get on the phone every 2 minutes and call Alleman, (12) Provenzano assigned Ragas to work in Mackey's area on February 1, (13) Provenzano was present when Ragas was terminated, (14) Alleman's position evaluation contemplates that Alleman could have lower levels of supervision working under him, (15) the fact that Provenzano's position classification was not changed during his 8-month assignment to Port Sulphur is not dispositive, (16) the fact that Provenzano could not hire or fire employees is not dispositive, (17) the absence of a supervisory title is not determinative if in fact the person possesses and exercises supervisory authority and is held out to employees to be a supervisor, (18) the exercise of any one of the statutory indicia is sufficient to confer supervisory authority, and (19) Section 2(11) of the Act does not require the exercise of the power but rather the existence of the power.

Respondent, on brief, contends that Provenzano is not a supervisor since he exercised no independent judgment connected with his duties, but rather merely served as a conduit for managerial instruction.

Alleman did not deny that on February 2, 1989, he had to ask Provenzano about the fact that Ragas was working in Mackey's territory. In other words, Alleman did not have prior knowledge of this situation. It would follow, therefore, that if Provenzano assigned Ragas to do work in Mackey's territory, he did not get Alleman's advance approval before making the assignment. In other words, Provenzano would have been exercising independent judgment and would not have been merely acting as a conduit for managerial instruction. Ragas testified that Provenzano did make this assignment. What is Provenzano's story? Provenzano testified that he did not discuss with Alleman that the Buras job was not in Ragas' territory and he did not know if the question of this being outside of Ragas' territory came up the day Ragas was terminated. In other words, he was there when Ragas was terminated but Provenzano would not admit to anything which might demonstrate that he was a supervisor. Contrary to Respondent's assertions, Provenzano did not merely serve as a conduit for managerial instruction. This is one example where management outside of Port Sulphur had no idea what was going on. Another appears to be the time Provenzano had John Ragas accompany Provenzano when he went to see a man about a transmission for his son's car. This was done during worktime. Obviously, management outside Port Sulphur would not have been happy with this situation, especially in view of Alleman's assertion that he had already put Ragas on notice that he would be terminated if he did not straighten out and produce. Alleman is not credited regarding this assertion. He was not a credible witness. Unlike the trip to the excavation site where the pipe coating was damaged, here Ragas went with Provenzano in Provenzano's truck to speak to the transmission man. Would he have done this during worktime if he did not view Provenzano as a supervisor? Would he have driven to the facility to pick up Provenzano, pursuant to Provenzano's instructions, and have taken him to the above-described excavation site if he did not view Provenzano as a supervisor? For whatever reason he may have had, it is my opinion that Alleman did tell Ragas and Mackey that Provenzano was their supervisor. Ragas is credited on this point. As pointed out by counsel for the General

³³ As pointed out by counsel for the General Counsel on brief, Ragas did not assert that the applications were present that day in the coffee shop.

Counsel, the exercise of any one of the statutory indicia is sufficient to confer supervisory authority. Here Provenzano may not have had the authority to hire or fire but he did have and he did exercise the power to assign and direct employees. Accordingly, in my opinion Provenzano was a supervisor under the Act.

As noted above, Provenzano's absurd testimony regarding the soup line comment is not credited. Counsel for the General Counsel points out on brief that in answering one of her questions regarding an unrelated subject, Provenzano stated that if a serviceman did not service leaks first and something happens, "[t]hen you are in the soup." It is argued that Provenzano's choice of words is clearly more than just a remarkable coincidence to the alleged violative comment herein. Ragas is credited. When Provenzano told Ragas that if he kept "talking that union talk . . . [he was] going to find . . . [himself] in the soup line" Respondent was unlawfully threatening Ragas that he would be terminated for engaging in union activity.

And finally, the complaint alleges that Respondent, acting through Hanrath, informed its employees that it would be futile for them to select the Union as their bargaining representative. As noted above, Koch was not, in my opinion, a credible witness. Consequently, on this matter it comes down to whether I believe John Ragas or Hanforth. As noted above, in my opinion Ragas is a credible witness. It would have been one thing if Hanforth had not strayed at all from a prepared text which he read while holding it in his hand for all to see and he looked at it while he read it. But it is quite something else when Hanforth himself testifies that (1) he went beyond the prepared text when at the outset of his talk he said that he knew of the employees prior union affiliation because he wanted them to know that it had no bearing on their employment with Respondent but they needed to know how Respondent felt about union organizing of its employees, (2) he could not recall whether he held the prepared text in his hand as he read it, and (3) he looked at the employees as he gave his talk. On brief, counsel for the General Counsel contends that Respondent, knowing not only of the Union's representation at the Delta Gas facility, but also of the same Union's attempt to organize two of its other facilities, had a real concern that these particular employees would organize. Ragas is credited. Hanforth's statement that Respondent never will be union, which statement was made in a formal meeting of management representatives with employees, violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by informing employees that it would be futile for them to select the Union as their bargaining representative.
4. The Respondent violated Section 8(a)(1) of the Act by threatening an employee with discharge if he continued to engage in activities on behalf of the Union.
5. The Respondent violated Section 8(a)(1) and (3) of the Act by discharging John Ragas for union activity.
6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes of the Act.

Having found that Respondent discharged John Ragas in violation of Section 8(a)(1) and (3) of the Act, it is recommended that Respondent offer John Ragas immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position without prejudice to his seniority or other rights and privileges, and make him whole for any loss of pay he may have suffered as a result of the discrimination against him by payment to him of a sum of money equal to that which he would have earned as wages during the period from the date of his discharge to the date on which Respondent offers reinstatement less net earnings, if any, during said period with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).³⁴

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³⁵

ORDER

The Respondent, Louisiana Gas Service Company, Port Sulphur, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Informing employees that it would be futile for them to select the Union as their bargaining representative.
 - (b) Threatening an employee with discharge if he continued to engage in activities on behalf of the Union.
 - (c) Discharging an employee because he has engaged in union activities.
 - (d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) Offer John Ragas immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings or other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.
 - (b) Remove from its files any reference to the unlawful discharge and notify John Ragas in writing that this has been done and that the discharge will not be used against him in any way.
 - (c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

³⁴ Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set forth in the 1986 amendment to 26 U.S.C. § 6621.

³⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Post at its facility in Port Sulphur, Louisiana, copies of the attached notice marked "Appendix B."³⁶ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

³⁶If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX A

CONDITIONS OF EMPLOYMENT

I understand that if employment is afforded me at LGS, such employment requires that I agree to conform to LGS rules and regulations. I further understand employment and compensation may be terminated, with or without cause, and with or without notice, at any time, at the option of either

LGS or myself. I also understand that no representative of LGS has the authority to enter into any agreement with me for employment for any specified period of time, or to make any agreement with me contrary to the foregoing.

I agree to submit myself upon request to a Pre-employment Drug Screening (urinalysis) test by a physician and/or laboratory designated by LGS, and understand that failing to submit to and/or pass the Pre-employment Drug Screening test will result in my not being considered for employment with LGS.

I agree to submit myself upon request for a physical examination by a physician designated by LGS, and understand that failing to pass such examination will result in my not being employed and/or retained in the service of LGS.

I hereby authorize every former employer and any person, firm or corporation listed above as references to answer any and all questions which may be asked by LGS concerning me and my work, habits, character or skill or any action in any transaction.

I declare that my answers to the questions in this application are true to the best of my knowledge and belief, I understand that any false statements appearing on this or any other employment form will be sufficient reason not to hire me, and if discovered after my employment, will be sufficient reason for dismissal from the service of LGS.

Signature of Applicant _____ Date _____